IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WA.No. 1450 of 2007()

AGAINST THE ORDER IN WPC.14155/2007 Dated 28/05/2007
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APPELLANT: PETITIONER

M/S.YOGESH TRADING CO., KOTACHERRY,
KANHANGAD, KASARAGOD DISTRICT,
REPRESENTED B.YOGESH PRABHU, MANAGING PARTNER.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SRI.MAHESH V.MENON

RESPONDENTS: RESPONDENTS
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1. COMMERCIAL TAX OFFICER ON DEPUTATION,
O/O. ASST.COMMISSIONER OF COMMERCIAL TAXES,
(KVAT), SPECIAL CIRCLE, KASARAGOD.

2. INSPECTING ASST.COMMISSIONER OF
COMMERCIAL TAXES, KASARAGOD.

3. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT TAXES DEPARTMENT,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY SPL.GOVERNMENT PLEADER (TAXES) MR.V.V.ASOKAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21/06/2007, ALONG WITH W.P.(C) NO.14155 OF 2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.1450 of 2007 &
W.P.(C) No.14155 of 2007

Dated, this the 21st day of June, 2007

JUDGMENT

H.L.Dattu, C.J.

Against an interim order passed by a learned Single Judge of this Court in W.P.(C) No.14155 of 2007 dated 28th May, 2007, the petitioner in the writ petition has filed this writ appeal before us.

2. Sri.Harisankar V.Menon, learned counsel appearing for the appellant, would submit that this Court in W.A.No.2220 of 2006 by its judgment dated 23rd March, 2007 had set aside the orders of penalty passed by the Intelligence officer of the department in exercise of his powers under Section 45 A of the Kerala General Sales Tax Act.

3. The learned counsel submits that the assessing authority primarily relying upon the report of the Intelligence officer of the department has completed the assessments for the period 1998-99 to 2002-03. Since the penalty order itself has been set aside by this Court, the orders passed by the assessing authority may not be justified.

4. We have carefully perused the impugned orders passed by the assessing authority for the assessment years 1998-99 to 2002-03. The entire assessment orders are solely based on the report of the Intelligence wing of the department. Now, that the penalty orders have been set aside by a Division Bench of this Court in W.A.No.2220 of 2006, in our opinion, this aspect of the matter requires to be taken note of by the assessing authority. Since that has not been done, we intend to set aside the orders of assessment passed for the aforesaid assessment years and remit the matter to the assessing

authority to redo the matter in accordance with law after affording an opportunity of hearing to the appellant. Accordingly the following:

Order

i) The writ appeal is disposed of.

ii) The impugned order passed by the learned Single Judge is set aside.

iii) The orders of assessment passed by the assessing authority for the assessment years 1998-99 to 2002-03 are also set aside.

iv) The matter is remitted back to the assessing authority to redo the matter in accordance with law keeping in view the orders passed by the Division Bench of this Court in W.A.No.2220 of 2006 dated 23rd March, 2007.

v) In view of the disposal of the writ appeal, W.P.(C) No.14155 of 2007 is also disposed of.

vi) In view of the order passed in the writ appeal, the relief sought in I.A.No.6259 of 2007 in W.P.(C) No.14155 of 2007 need not be considered by this Court. Accordingly the said I.A. is also rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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